



mat. 6-5-39
file

OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

March 15, 1939

Hon. C. Burt Potter
County Attorney
San Patricio County
Sinton, Texas

Dear Sir:

Opinion No. 0-480
Re: Article 432, Penal Code does not
apply to employment of County
Commissioner's daughter by Dis-
trict Clerk.

This will acknowledge receipt of your letter of March 11, 1939, in which you request an opinion as to whether or not Article 432 of the Penal Code, Revised Civil Statutes of Texas, 1925 is violated by the following statement of facts taken from your letter:

"Our District Clerk employs by authority of the commissioner's court a part-time deputy, whose salary is \$150.00 per year. This deputy is the daughter of a county commissioner. She is not required to have a bond, acting under the District Clerk's bond, which has been approved by the commissioner's court."

Article 432 of the Penal Code reads as follows:

"No officer of this State or any officer of any district, county, city, precinct, school district, or other municipal subdivision of this State, or any officer or member of any State, district, county, city, school, district or other municipal board, or judge of any court, created by or under authority of any general or special law of this State, or any member of the Legislature, shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of

any person related within the second degree by affinity or within the third degree by consanguinity to the person so appointing or so voting, or to any other member of any such board, the Legislature, or court of which such person so appointing or voting may be a member, when the salary, fees, or compensation of such appointee is to be paid for, directly or indirectly, out of or from public funds or fees of office of any kind or character whatsoever."

-- Article 3902 of the Revised Civil Statutes of Texas provides the means by which a District, County or precinct officer can obtain the services of deputies and the pertinent parts thereof are as follows:

"Whenever any district, county or precinct officer shall require the services of deputies, assistants or clerks in the performance of his duties, he shall apply to the county commissioners' court or his county for authority to appoint such deputies, assistants or clerks, stating by sworn application the number needed, the position to be filled and the amount to be paid.....Provided that, in no case, shall the commissioners' court or any member thereof attempt to influence the appointment of any person as deputy, assistant or clerk in any office."

Thus, it is seen that the Commissioners' Court need not be apprized of or advised the name of the party or parties whom the officer desires to appoint. The Commissioners' Court merely authorizes the appointment of deputies to a certain position at a designated salary. The court does not "appoint, vote for, or confirm the appointment" of any person to any position within the particular official's department so as to constitute a violation of Article 432 of the Penal Code.

It is, therefore, the opinion of this Department and you are so advised that it will not be a violation of Article 432 of the Penal Code for the District

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Clerk of your county to hire as his deputy a daughter
of one of your county commissioners.

Trusting that this satisfactorily answers
your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

Lloyd Armstrong
Lloyd Armstrong
Assistant

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APPROVED:

Gerard H. Mann
ATTORNEY GENERAL OF TEXAS